

Discipline in Schools

Are zero-tolerance policies fair?

More than a decade after a string of deadly school shootings focused attention on student discipline, the search continues for effective methods to curb classroom misconduct. Zero-tolerance policies, widely adopted during the 1990s, have led to skyrocketing suspension and expulsion rates in many school districts, sparking criticism that get-tough conduct codes are ineffective at stopping misbehavior and harmful to the education process. Civil-rights and child-advocacy groups say such codes have led to too many cases of harsh punishment for relatively minor violations, sometimes sending youngsters out on the street where they get into worse trouble. Critics also charge that black students are far more likely to be punished for similar misconduct than whites under the zero-tolerance approach. Meanwhile, a provision in the federal No Child Left Behind law, which requires states to identify “persistently dangerous schools,” is the subject of sharp debate as the law moves toward possible reauthorization this year.



Members of the Louisiana Technical College community mourn after a student shot and killed two fellow students on Feb. 8, 2008, and then took her own life.

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Discipline in Schools

BY THOMAS J. BILLITTERI

THE ISSUES

Milwaukee school Superintendent William Andrekopoulos is concerned.

Students are being suspended by the thousands, many for minor infractions such as disrupting class, he says. Among the city's more than 9,000 ninth-graders, nearly 40 percent are suspended at least once a year, typically for one to three days. Many are sent home multiple times.

"The suspension data is terrible," Andrekopoulos says. "This is a grave concern."¹

School systems around the country are beginning to look hard at their discipline practices — particularly how they affect suspension and expulsion rates, not to mention learning and morale. They are especially scrutinizing so-called zero-tolerance policies, which rely heavily on suspension or expulsion to deal with misconduct, often regardless of the severity of the infraction.²

Civil-rights and child-advocacy groups say such codes have led to too many cases of harsh punishment for relatively minor violations, sometimes sending youngsters out onto the street where they get into much worse trouble.

The fact that black students are disproportionately targeted by such policies raises serious concerns among policymakers, educators and parents. According to an analysis of federal 2004-05 school-year data conducted by the *Chicago Tribune*, African-American students in the average New Jersey public school were nearly 60 times as likely as whites to be expelled for serious infractions.³



Students hold a vigil for peace following two apparently racially motivated brawls involving Latino and African-American students at Thomas Jefferson High School in Los Angeles in April 2005. Although non-fatal crimes against students steadily declined in the U.S. since 1992, 86 percent of public schools say they still have at least one serious incident per year.

Getty Images/David McNew

Critics also worry that get-tough policies can undermine common sense in dealing with problem students, leading to unfair or even irrational decisions. In California last June, for instance, a principal ordered "graduating" fifth-graders to cut off the plastic rifle tips from tiny toy soldiers they used to adorn their mortarboards. The principal's rationale: The toy guns violated the school's zero-tolerance firearms policy. After parents raised a ruckus, school officials apologized.⁴

Of course, schoolteachers and officials know only too well that schools are not immune from horrendous crimes. In Chicago this year, for example, a student was accused of stab-

bing a teacher, blinding her in one eye.⁵ In February, a female student at Louisiana Technical College in Baton Rouge shot and killed two other women in a classroom before killing herself.⁶ And rowdy or bullying behavior undermines learning and drags down teacher morale in classrooms around the country. (See chart, p. 149.)

Yet critics say that while zero-tolerance policies are appropriate when students endanger themselves or others, punishment for lesser offenses — such as "disrespect" — can be highly subjective and ultimately counterproductive.

Jane Sundius, director of the education and youth development program at the Open Society Institute-Baltimore, a nonprofit group working to reduce suspension in the city's schools, acknowledges the "justifiable fear" that teachers and administrators may feel over school violence. "Children do dangerous things," she says. But schools must be able to dif-

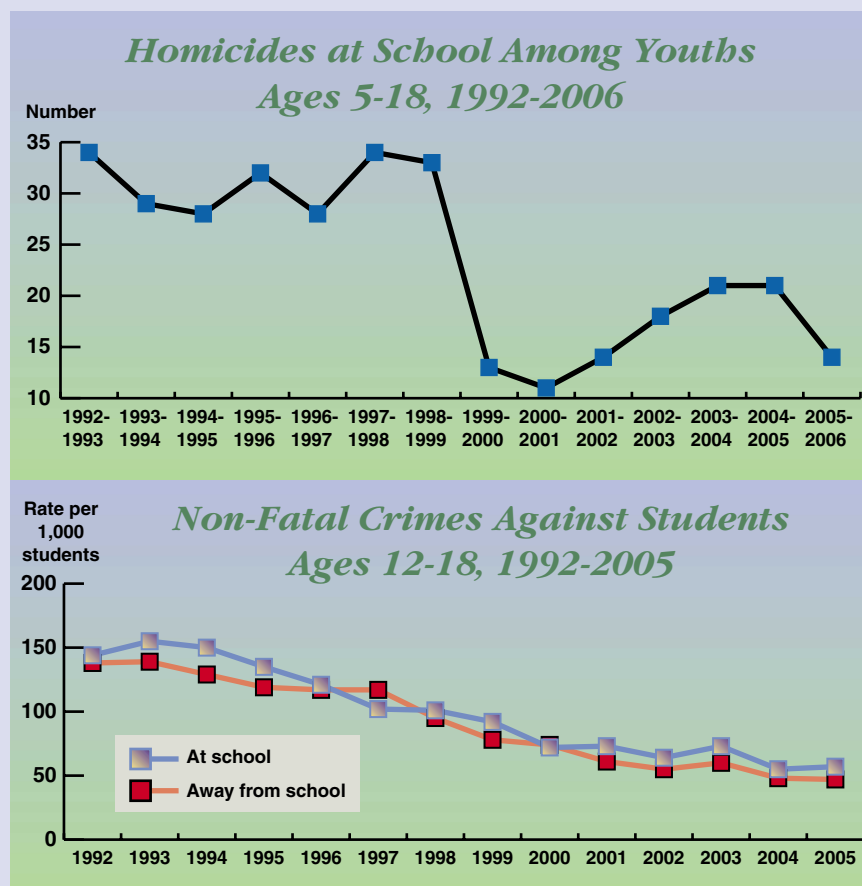
ferentiate between violent actions that merit suspension or expulsion and non-violent behavior that may require a different approach, she says.

"School is where we need to teach kids to act appropriately," she says. "Punishing [acts of disrespect or minor disruption] doesn't help them manage that. And the nature of adolescence is to rebel. It's the job of parents and also the school to guide them in how to do that appropriately."

Kathleen Buzad, assistant director of the Educational Issues Department at the American Federation of Teachers (AFT), says the group endorses zero tolerance for illegal drugs, weapons and "extreme acts of violence." A well-

Violent Crimes Against Students on the Decline

Fourteen homicides were reported among students ages 5 to 18 in the 2005-06 academic year, 20 less than in 1992-93 (top graph). Homicides dropped significantly following the 1999 shooting at Columbine High School in Littleton, Colo. Similarly, rates of non-fatal crimes against students decreased to about one-third of 1992-93 levels (bottom).



Source: "Indicators of School Crime and Safety, 2007"; National Council for Educational Statistics, Bureau of Justice Statistics

implemented zero-tolerance policy, she says, can reduce discrimination and favoritism, she says. For instance, "The captain of the football team wouldn't get off, as opposed to another kid who's not liked by teachers."

But, she adds, "Zero tolerance is not a silver bullet for the problem of school violence and order." Along with a clear, effective and "rigorously enforced" discipline policy, she says,

schools need a "comprehensive approach" that includes behavior-modification tools for students, efforts to enlist parent and community help to improve school climates, better teacher training and academically sound alternative programs for students removed from class.

Building one-on-one relationships with students is most crucial of all, adds Bill Bond, a safe-schools specialist at

the National Association of Secondary School Principals. "Developing true safety in schools depends on students trusting the adults," he says.

"Sure, there's got to be some zero tolerance," Bond says. "You cannot allow guns in school. Weapons, knives, absolutely." But, he adds, "if you leave no discretion for your professionals to make any judgments, then why are you hiring professional principals? Even in law enforcement, we allow police officers and district attorneys some discretion in which charges they file."

Bond is no novice at dealing with school violence. Ten years ago he was the principal of a school in Paducah, Ky., when a 14-year-old male student brought five guns to school and opened fire, killing three girls and wounding five other students.⁷ Good education policy, he says, means concentrating on the school environment and climate and surveying students, teachers and parents about what they perceive is going on in the school and where the problem areas are.

In various ways, some administrators and policy advocates are trying to move schools away from cookie-cutter discipline codes and make room for a more discretionary approach. In Baltimore, for example, the Open Society Institute is spearheading a \$1.5 million effort to reduce suspensions and expulsions in city schools. It includes counseling and mental-health services, programs to teach children how to resolve conflicts, and services to help teachers, administrators and parents reduce violence and other misconduct and improve academic performance.

Open Society also is helping school officials rework the discipline code. In 2006-2007, nearly 10,000 Baltimore students — representing 12.5 percent of total enrollment — were subject to out-of-school suspensions, primarily for insubordination, disruption and disrespect.⁸

Bullying More Common Among Younger Students

Nearly 37 percent of sixth-graders reported being bullied in 2005, more than all higher grades. Name calling and insults were the most common form of bullying. Overall, more females than males reported being bullied and higher percentages of whites than blacks or Hispanics.

Percentage of Students Ages 12-18 Who Reported Being Bullied, 2005

Student or school characteristic	Total	Made fun of, called names or insulted	Subject of rumors	Threatened with harm	Pushed, shoved, tripped, spat on	Tried to make do things did not want to do	Excluded from activities on purpose
Total	28.1	18.7	14.7	4.8	9.0	3.5	4.6
Sex							
Male	27.1	18.5	11.0	5.2	10.9	3.9	4.1
Female	29.2	19.0	18.5	4.4	7.1	3.1	5.2
Race/ethnicity							
White	30.0	20.1	15.8	5.1	9.7	3.6	5.3
Black	28.5	18.5	14.2	4.9	8.9	4.7	4.5
Hispanic	22.3	14.7	12.4	4.6	7.6	2.6	3.0
Other	24.6	16.3	11.6	2.1	6.8	2.1	2.5
Grade							
6th	36.6	26.3	16.4	6.4	15.1	4.4	7.4
7th	35.0	25.2	18.9	6.3	15.4	4.7	7.1
8th	30.4	20.4	14.3	4.3	11.3	3.8	5.4
9th	28.1	18.9	13.8	5.3	8.2	3.2	3.8
10th	24.9	15.5	13.6	4.9	6.8	3.6	3.6
11th	23.0	14.7	13.4	3.2	4.2	2.8	3.3
12th	19.9	11.3	12.5	3.5	2.9	1.8	2.2

Source: "Indicators of School Crime and Safety, 2007"; National Council for Educational Statistics, Bureau of Justice Statistics

Baltimore schools CEO Andres Alonso has discouraged principals from suspending students for cutting class, insubordination and other non-violent misbehavior. "I never want to suggest to a principal, 'Don't suspend,' " he said. "What I want to suggest is, 'Use your common sense.' I do believe a child being in school is the only way to intervene. . . . You cannot suspend a system into good outcomes." ⁹

Nationwide, nearly 7,200 schools in 44 states now participate in a process known as School-wide Positive Behavior Support, which combines efforts to teach and reinforce

good behavior, social skills and academic standards, discourage inappropriate behavior and coach teachers and staff in how to make the process effective and efficient. An important component is careful data collection, so schools can identify problems and chart the effectiveness of intervention strategies. ¹⁰

Schools adopting the program have seen a 20-60 percent reduction in the number of disciplinary referrals to the principal's office, says Robert Horner, a professor of special education at the University of Oregon who helped develop the program under a federal

grant from the Office of Special Education. "If you want to change behavior, you must define the behavior you want, actively teach that and build a formal system where [the student] is rewarded for doing things the right way and not rewarded for doing things the wrong way," he says.

The movement to review discipline policies is occurring against a backdrop of mixed data on school crime. Student killings, while tragic, remain rare. School-associated student homicide rates fell significantly between 1992 and 2006. From 1999 to 2006, for instance, student homicides totaled 116, or an

average of 16.5 per year, according to a new study by the Centers for Disease Control and Prevention.¹¹

"Schools remain safe places for students," said co-author Jeff Hall.¹²

Non-fatal crimes against students also declined steadily from 1992 to 2005, according to the latest federal statistics, released in December.¹³ Still, 86 percent of public schools reported at least one violent crime, theft or other serious crime during the 2005-2006 school year, according to the data.¹⁴

Whether serious or not, student misconduct can take a toll on teachers, who find themselves on the front lines in fighting the disruptions. In a survey of 2,000 unionized West Virginia school employees — including teachers, bus drivers and instructional aides — half said they felt intimidated by a classroom bully last year. Among teachers, more than a third said they lost 20 percent of instructional time weekly to disruptive behavior.¹⁵

"The discipline issue has gotten much worse, as the survey shows," said Judy Hale, president of the AFT-West Virginia. "It's a common occurrence for teachers to be cursed. And the children who are there to learn are being shortchanged. It is a small number of students who constantly disrupt, so it's time we took a good hard look at this again."¹⁶

And in a 2004 national study, more than a third of middle- and high-school teachers said they had seriously considered quitting the profession, or knew a colleague who had left, because student discipline and behavior had become intolerable.¹⁷

When teachers do quit, the price tag is high. The National Commission on Teaching and America's Future estimated the cost of public-school teacher turnover at more than \$7 billion a year.¹⁸

As schools continue to grapple with student-discipline problems, here are some of the questions they are asking:

Have zero-tolerance policies made schools safer?

Many zero-tolerance policies were strengthened in the wake of school shootings in the 1990s, and the strict, no-nonsense approach found favor in conservative law-and-order circles.

Domoine D. Rutledge, general counsel for the East Baton Rouge Parish School System in Louisiana, says zero-tolerance policies have helped to create a culture within school districts and schools that "certain things will not be tolerated, period."

But whether or not that policy works depends on "how fairly it's enforced and how consistently it's enforced" and whether the student is afforded appropriate due process, he says.

"Given the incidences of violence — unspeakable violence — that we've seen on some of our school campuses," he continues, "schools districts have had to really balance the interest of the whole school, the student body, teachers and faculty . . . as well as the rights of individual bad actors. The ability to strike that balance, and to do it fairly, more than likely influences the effectiveness of the zero-tolerance policies."

The East Baton Rouge system has a zero-tolerance policy for fighting, which states that law-enforcement authorities will be called in for any fight involving students 14 or older.¹⁹ But Rutledge describes the policy as more flexible than that. For example, he says, if two students 14 or older are caught fighting, a school resource officer is called in who can offer counseling, call the students' parents, arrest the students or issue a misdemeanor summons. But if more than two students are involved, he says, they are recommended for expulsion.

In addition, in recent years the district has implemented a "positive behavior intervention program" that he says has reduced the number of expulsions.

Kay S. Hymowitz, a contributing editor for a magazine published by the conservative Manhattan Institute,

noted in 2001 that the arrest of a pair of New Jersey 8-year-olds for pointing paper guns at classmates was just the kind of episode that leads people to question zero-tolerance policies. But she also listed far more serious incidents involving juveniles.

"It's not so easy to distinguish the prankster from the wild-eyed adolescent with a [lethal] plan when lives are at stake," she wrote. In the end, "Zero tolerance may be more symptom than cure for the uneasy disciplinary climate of our schools. Certainly it's no final answer to out-of-control 5-year-olds or revenge-crazed teenagers. But as the threats continue and the bombs and guns appear, it's all we've got."²⁰

While that view still prevails today in many school systems, critics of the get-tough approach see no evidence that zero-tolerance policies have made schools safer. On the contrary, after reviewing a decade of research on such policies, the American Psychological Association concluded in 2006 that such codes "can actually increase bad behavior and also lead to higher dropout rates."

"[S]chools are not any safer or more effective in disciplining children than before these zero-tolerance policies were implemented," the association said.²¹

Ruth Zweifler, founder of the Student Advocacy Center of Michigan, agrees. The zero-tolerance approach "breeds a poisonous environment," she says. "On various levels, children who have concerns either about something they have done or about other kids will hesitate to go to an adult because the response is punishment rather than help. It reinforces for staff that these kids are dangerous. It just doesn't build a healthy, trusting, learning community."

In defense of "sensible" zero-tolerance codes, Charles Patrick Ewing, a professor of law and psychology at the State University of New York at Buffalo, wrote that critics cite a handful of cases in which zero tolerance led to absurd results, such as young children being sus-

pendent for having nail clippers. "If this is what is meant by zero tolerance, the critics are right," he acknowledged.

"But what about the more common applications?" he continued, such as when a student brings a loaded gun to school, shows it to a classmate and then turns it over to a teacher, or a high-school student punches another in the face. "Under most zero-tolerance policies, each of these students would be suspended from school." ²²

Sensible applications of zero-tolerance policies are warranted in all schools for several reasons, he concluded, including — first and foremost — the need to at least temporarily separate a dangerous or potentially dangerous student from the rest of the school population. Beyond immediate safety concerns, he added, applying zero tolerance "serves as a deterrent . . . by sending a clear message that acts that physically harm or endanger others will not be permitted at school under any circumstances."

But have such policies really made schools more secure? Russell J. Skiba, a professor of counseling and educational psychology at Indiana University who has studied discipline codes and school violence extensively, insists, "There really is no evidence that zero-tolerance policies have made schools any safer."

If such policies were effective, he says, one would expect to find certain traits in schools that employ them: lower rates of problem behavior, a favorable



A K-9 dog helps inspect open lockers at Wyoming Area High School in Exeter, Pa., in May 2007 after school officials received a note threatening violence at the school. After the school reopened, entering students had to pass through a metal detector.

AP Photo/The Citizens' Voice/Kristen Mullen

Studies have found that between a third and half of suspended students are repeat offenders, indicating that an overreliance on suspension and expulsion is ineffective at deterring misconduct, Skiba noted in a review of zero-tolerance policies. "In one study, students who were suspended at the sixth-grade level were more likely to be referred to the office or suspended in eighth grade, leading the researchers to conclude that 'for some students, suspension functions more as a reinforcer than a punisher.'" ²³

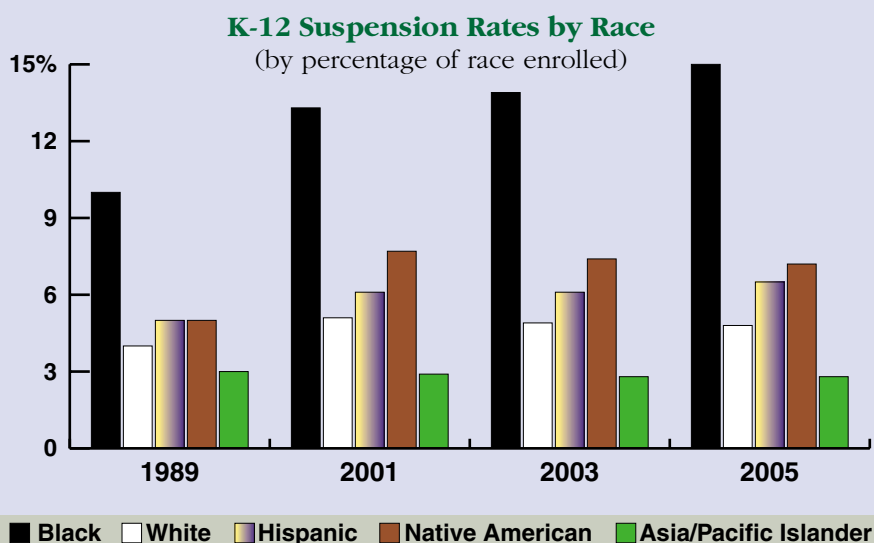
Inconsistent application is one of zero-tolerance policies' flaws, Skiba said. For instance, one study found that the probability of middle-school students being suspended if they were referred to the principal's office ranges from 11 to 86 percent, depending on how discipline policies were applied by individual schools and administrators, Skiba says.

Like Skiba, Horner at the University of Oregon says there is no empirical evidence that zero-tolerance policies have made schools safer. Rather, he says, research shows that discipline codes that rely heavily on punishment can inadvertently reward problem behavior. Students penalized by adults often are admired by their peers, he notes. And a suspension or expulsion also can relieve misbehaving students of what they might loathe the most: Students who are "unhappy being in class aren't unhappy being sent to the office or removed from class."

"Negative consequences alone have not been found to produce broad improvement in the social behavior of children in schools," Horner concludes.

Racial Gap Widens for Suspensions

Suspension rates for black students rose to 15 percent since the 1988-1989 school year. Blacks are now three times as likely to be suspended as whites and more than twice as likely as Hispanics. Civil-rights and child-advocacy groups worry that zero-tolerance policies result in too many cases of harsh punishment for relatively minor violations, and that minorities are unfairly targeted.



Note: Data from the 2004-05 school year are the most recent available.

Sources: Office of Civil Rights, U.S. Department of Education, 2008; Daniel Losen, UCLA

Teaching and acknowledging appropriate behavior also is necessary, he says.

Many educators also worry that relying too heavily on suspensions or expulsions puts young people — even those accused of non-violent misconduct — in alternative programs where they can fall behind academically or find themselves out on the street where they often get into more serious trouble. “Students whose education is disrupted for a period of time may have difficulty catching up and may eventually drop out of school,” noted a report on disciplinary offenses in Tennessee, where 13 percent of zero-tolerance offenders were expelled in 2004-2005 without placement in an alternative school.²⁴

Daniel Losen, senior education law and policy associate at the Civil Rights Project at the University of California,

Los Angeles, has studied student suspensions extensively. He says it is the “abuse” and “overuse of suspensions” that trouble him. “I’m not against suspending kids as a principle,” he says, “but when you’re suspending a third of the kids, you’ve got a problem.”

Most students are suspended under zero-tolerance policies for non-violent, non-criminal behavior, Losen notes. “One of the biggest increases [in suspension rates] is for truancy,” he says. And such suspensions “abrogate the school’s responsibility,” he adds. “They don’t have to go out and collect the kids” and get them back into class.

Suspensions increase not only the risk that students will get into worse trouble but also the chances that students will drop out of school, Losen also says. “Being suspended once in-

creases the risk of dropping out by three times.” Middle-school suspension rates are often higher than those for high school because many middle-school students simply drop out after being suspended and never move up to higher grades, Losen says.

“The answer to school violence is not to transform schools into totalitarian police states and lock up every naughty child,” wrote Trent England, a legal policy analyst, and Steve Muscatello, a researcher, at the conservative Heritage Foundation’s Center for Legal and Judicial Studies.²⁵

“Zero-tolerance policies rob the rule of law of its moral authority by focusing on punishment rather than justice,” they continued. Writing six years after the Columbine shootings, they said, “the time has come to break the cycle of hijacking the memories of violent school tragedies to defend zero-tolerance injustice.”

Is racism responsible for high suspension rates among minorities?

No discipline-related issue is more fraught with controversy than the disproportionate effect that punitive policies have on black students.

In South Carolina’s Charleston County School District, 83 percent of the 5,837 middle- and high-school students suspended at least once in 2006 were black.²⁶ In Minnesota, blacks are suspended six times as often as whites, and in 21 states the proportion of black suspensions is more than double their percentage of total enrollment, according to the *Chicago Tribune*.²⁷

Indeed, the *Tribune’s* analysis of U.S. Department of Education public-school data for 2004-2005 found that in every state except Idaho, “black students are being suspended in numbers greater than would be expected from their proportion of the student population. . . . [O]n average across the nation, black students are suspended and expelled at nearly three times the rate of white students.” Yet, the *Tribune* added, “black students are no more

likely to misbehave than other students from the same social and economic environments, research has found.”²⁸

Moreover, “No other ethnic group is disciplined at such a high rate,” the newspaper found. “Hispanic students are suspended and expelled in almost direct proportion to their populations, while white and Asian students are disciplined far less.”

And Yale University researcher Walter S. Gilliam found that the disproportionate expulsion rates aren’t just a phenomenon in elementary and high schools. A study published in 2005 found that African-Americans attending state-funded pre-kindergarten were roughly twice as likely to be expelled as Latino and Caucasian children — and more than five times as likely as Asian-American youngsters.²⁹ Surprisingly, he also found that pre-kindergarten students in general were more than three times more likely to be expelled than children in grades K-12.

As stark as the racial disparity in school-discipline cases may be, explaining it is no easy matter.

Researchers have found no evidence that poverty or family instability explains the phenomenon, says Skiba of Indiana University. While poverty and family problems can contribute to a student’s misconduct, he says, research shows that minorities are disciplined more than whites even after accounting for those factors.

Moreover, he says, in any given school district there is no evidence that blacks are more prone to misbehave than whites are. “If anything, you find in any district study that African-Americans are more likely to be treated more harshly for the same offense” than other students, he says.

In fact — even though zero-tolerance policies were designed to level the discipline playing field and eliminate favoritism — research shows that discipline often is meted out subjectively. For instance, in 2002 Skiba and three colleagues concluded that blacks tend to

get in trouble for less-serious reasons than whites. Whites were significantly more likely to be referred to the principal’s office for smoking, leaving without permission, vandalism and using obscene language, while blacks were more likely to be sent for disrespect, excessive noise, threats and loitering.³⁰

Some researchers attribute part of the reason for racial disparity in discipline to cultural differences between minority students and white teachers. The *Tribune* found some of the highest rates of racial disparity in states with the lowest minority populations, where, it said, “the disconnect between white teachers and black students is potentially the greatest.”

“White teachers feel more threatened by boys of color,” Isela Gutierrez, a juvenile-justice expert at the Texas Criminal Justice Coalition, told the newspaper. “They are viewed as disruptive. What might be their more assertive way of asking a question is viewed as popping off at the mouth.”

But cultural differences cannot explain all the disparity, the *Tribune* concluded. Even in mostly black urban schools, African-American students are disciplined out of proportion to their enrollment.

Horner of the University of Oregon says better data collection on the nature, number and disposition of student discipline cases, along with other data on school climates, would shed important light on why the disparity is occurring and help schools eliminate it.

“When we give people in schools regular information — their own data — that’s incredibly powerful,” he says. “It changes the problem-solving they’re engaged in.”

For now, though, “we don’t have the answer” to explain why minorities are disciplined more harshly than whites, Horner says. “It could be that kids are just behaving with higher rates of problem behavior. It could be they are just behaving consistent with what they think is a perfectly appropriate way to deal with adults that is learned at home and on the street. It could be simply that

racism is involved. It could be that [discipline] systems are so archaically organized that they don’t work very well.

“You could come up with a lot of what-ifs,” he concluded, “and the truth is it’s probably all of the above.”

Youth advocates express grave concern that many minority students hit with out-of-school suspensions or expulsions will wind up adrift out on the street, get into deeper trouble and end up in jail — a phenomenon often called the “prison track” or “school-to-prison pipeline.”

“Such phrases depict a journey through school that becomes increasingly punitive and isolating for its travelers,” two scholars wrote.

“Many will be taught by unqualified teachers, tested on material they never reviewed, held back in grade, placed in restrictive special-education programs, repeatedly suspended and banished to alternative outplacements before dropping out or getting pushed out of school altogether. Without a safety net, the likelihood that these same youths will wind up arrested and incarcerated increases sharply.”³¹

The *Tribune* noted that black youths represent 16 percent of adolescents in the United States but 38 percent of those incarcerated in youth prisons.

Should students have more legal rights in discipline cases?

Whenever students are disciplined, no matter their ethnic background or family circumstances, the issue of due-process protection always is in the background. In some respects, the Supreme Court has addressed that issue, most notably in the 1975 case *Goss v. Lopez*, which held that students facing out-of-school suspension of 10 days or less are entitled to certain due-process rights, including oral or written notice of the charges and some type of hearing in which they could present their version of the incident in question.³²

But some argue that *Goss* failed to do enough to shield students from faulty

disciplinary policies. For example, the court did not require that administrators in such cases allow students to cross-examine witnesses or present their own, nor did it grant the right to have a lawyer present.

"Providing students with an undeniable right to access legal counsel would . . . establish a checks-and-balances system," one scholarly article argued last year. "[L]egal counsel would be better suited than the average middle- or high-school student, or parent in some cases, to pinpoint due-process violations when they occur."³³

Others contend, though, that students accused of wrongdoing already have sufficient legal safeguards. "The public schools do afford sufficient due process, particularly in expulsions or high-stakes hearings," says Julie Underwood, dean of the School of Education at the University of Wisconsin-Madison and an expert on school law.

But some experts worry that school authorities don't always have a good understanding of the law. "Students have plenty of due-process protections," says Robert S. McCord, an associate professor of educational leadership at the University of Nevada, Las Vegas, who trains school administrators. That being said, he's still "a little uncomfortable how those due-process protections are executed in the schools.

"In other words," he continues, "are the people who are responsible — teachers, principals, superintendents, school boards — all as equally informed and sensitive to due-process protections? Sometimes their knowledge and their actions are a little spotty in that regard."

School officials may be "well-intended," McCord says, "but there is a certain sophistication in conducting due-process hearings and making sure rights are protected." If administrators have varying degrees of preparation, "you end up in long litigation." Schooling arguably has become equivalent to a property right, he notes, so "if we're going to remove students or threaten to

remove them, you have to ratchet up the care that must be taken." Having lawyers who specialize in education law not only can help protect students but also allow administrators to be assertive when they need to be, McCord says. He notes that courts sometimes interpret laws in the criminal setting differently from in the school setting.

In a lengthy scholarly article last year, McCord and his colleagues noted that determining "a true threat" in the school environment is a "slippery slope" that can be "perilous" for those who act without careful investigation of the facts before taking action.³⁴

Perhaps the slipperiest of slopes involve free-speech rights. Last year's Supreme Court decision in *Morse v. Frederick* did little to quell confusion in that area. The justices upheld a principal's right to punish a student who displayed a "Bong Hits 4 Jesus" banner across the street from school during a parade. School officials can censor and punish student speech that can be seen as advocating or celebrating illegal drug use, the justices ruled.³⁵

In another case an appeals court relied on the *Morse* decision to further limit student speech. In that case, a high-school sophomore had kept a journal in which he discussed creating a pseudo-Nazi group to commit a variety of violent acts. His claim to a school administrator that the diary was a work of fiction fell on deaf ears. The administrator determined the writings posed a "terroristic threat" to the school, suspended the student for three days and reported the diary to police, who arrested him. The county attorney's office declined to prosecute.³⁶

The appeals court ruled that "administrators must be permitted to react quickly and decisively to address a threat of physical violence against their students without worrying that they will have to face years of litigation second-guessing their judgment as to whether the threat posed a real risk of substantial disturbance."

Some analysts fear the ruling could open the door to zero tolerance of a wide array of speech, including clearly fictional speech about violence against students and even speech that advocates alcohol or tobacco use.³⁷ ■

BACKGROUND

Rise of Zero Tolerance

Although worries about school disorder and racial disparity in discipline have intensified in recent years, they are not new. During the Vietnam War era, many administrators viewed student activism as a scourge.

"To ignore student activism . . . is to invite total chaos in a school," a Delaware high-school principal declared. Said another, "To be a principal in times like these is not for the faint-hearted."³⁸

Even then, youth advocates worried that minorities, especially African-Americans, were being punished, suspended or expelled at higher rates than whites. In 1975 the Children's Defense Fund, a liberal child-advocacy policy group in Washington, concluded from a study of federal data that suspension rates among black students were two to three times those of whites.³⁹

In the ensuing years, several school-discipline issues came to a head, propelled in large part by growing drug use in both the population at large and among students. In fact, the zero-tolerance philosophy grew out of 1980s-era federal anti-drug policy. The first time the term was used may have been in 1983 to describe a U.S. Navy crackdown on drug abusers within their ranks.

In 1986, the term was used in connection with a federal program in San Diego aimed at impounding ships carrying any amount of drugs.⁴⁰ Then in

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Chronology

1960s *Vietnam-era protests spark concern over student conduct; juveniles gain due-process rights.*

1967

Supreme Court rules in *In re Gault* that juveniles accused of misconduct deserve many of the rights given to adult criminal defendants. . . . Students for a Democratic Society, a leftist organization started on college campuses, circulates information on how to “take over” a high school.

1969

Supreme Court rules in *Tinker v. Des Moines Independent Community School District* that school officials violated students’ First Amendment rights by suspending them for wearing armbands to protest the Vietnam War.

1970s *Protections broadened for students; schools pour more resources into security programs as school crime rises.*

1975

Congress passes Education for All Handicapped Children Act. . . . Supreme Court rules in *Goss v. Lopez* that suspended students are entitled to a hearing. . . . Children’s Defense Fund reports disproportionate rates of suspensions for black students.

1980s *Federal push for no-tolerance policies for illegal drug use and other crimes begins filtering down to schools.*

1986

Education Secretary William J. Bennett unsuccessfully urges Congress to withhold money from schools rejecting zero-tolerance expulsion for students using or selling drugs at school.

1989

School districts in California, New York and Kentucky have zero-tolerance policies for drugs and gang activity.

1990s *Gun violence in schools spurs tough new laws.*

1990

“Gun-free school zones” law makes it a felony to bring firearms near a school. . . . Individuals With Disabilities Education Act (IDEA) passes.

1994

California and a dozen other states pass “three-strikes-and-you’re-out” laws. . . . Omnibus Crime Bill includes mandatory drug sentences; Gun Free Schools Act requires expulsion for not less than a year for students caught with a firearm.

1995

Supreme Court strikes down Gun-Free School Zones Act, upholds random drug tests for school athletes.

1998

More than 30 students and teachers are killed in a spate of school shootings across the country.

1999

Two heavily armed students at Columbine High School in Colorado kill 12 students and a teacher and wound 23 before committing suicide. Schools nationwide tighten security and discipline codes.

2000-Present

More student violence occurs; courts and the federal government continue involvement in student-conduct issues.

2002

President George W. Bush signs No Child Left Behind Act mandating that states identify “persistently dangerous” schools.

2004

IDEA is reauthorized, providing greater leeway for school districts to discipline students.

2006

Gunman kills five girls and then himself at a one-room Amish schoolhouse in Pennsylvania.

2007

In the deadliest shooting rampage in U.S. history, Seung-Hui Cho, a student at Virginia Tech University, kills 32 students and teachers, then commits suicide. . . . Supreme Court rules in *Morse v. Frederick* that school officials can punish student speech that can be interpreted as advocating illegal drug use. . . . Delaware State University student is charged in the shooting of two students, one of whom dies.

2008

Families of Virginia Tech victims call for tighter gun control, but Virginia lawmakers defeat a bid to close a loophole on gun-show sales. . . . President Bush urges reauthorization of No Child Left Behind bill, which remains stalled in Congress. . . . Rep. Linda Sanchez, D-Calif., introduces legislation to require schools to include anti-bullying policies in their conduct codes. . . . Two students at Louisiana Technical College are shot and killed by a student, who then commits suicide.

Effective Schools Build Relationships With Students

Fights and discipline problems decline as trust develops.

Extreme school-discipline policies typically grab the headlines, yet it is often the quiet efforts with troubled students that are most effective at creating order in schools.

At Greenfield Middle School in central Indiana, principal James A. Bever says, "We emphasize relationships over rules."

That's also a theme at Garrison Middle School in inner-city Baltimore, where the Meet Me Halfway Village Center, started by a community volunteer in 2004, offers counseling, tutoring, conflict resolution and other support.

The relationship theme echoes, too, at racially diverse West Potomac High in Alexandria, Va., where principal Rima Vesilind emphasizes the importance of communication among students, teachers, parents and administrators.

"If kids are treated respectfully," she says, "they know we're trying to support them, and they most often come around."

Support, communication and respect are big words, too, at Greenfield Middle School. Despite its suburban setting, a fourth of the students come from low-income families, and Bever deals with the same kind of challenges — from drugs and fights to everyday classroom disruptions — that urban schools do.

"With 500 early adolescents, coming from every conceivable background, we're going to have situations that come up," Bever says. All the more reason, he says, to build ties with each student.

"It is important for our students to feel a great sense of belonging, for them to know they each are individually important to us, that we know who they are. If a student engages in a behavioral indiscretion, we don't come in and literally start throwing the book at them. We look at the issues underlying the behavior, address it, and if it's appropriate, there are consequences."

Even when the misconduct calls for suspension or expulsion, Bever says, the process is a collaborative one among the school, the student and the student's parents. "Our goal is that

there's a handshake and a mutual understanding."

Bever says that in the two years before he took over in 1999, more than 300 students a month were being removed from class for disciplinary reasons, and some violence had occurred, including the serious beating of a student. A redistricting plan had

raised tensions (some complained that the best students were shifted to another school), and Indiana had placed Greenfield Middle on academic probation.¹

Upon his arrival, Bever took a tough approach to discipline, enlisting the help of local police and hiring uniformed guards for after-school events. But once safety was restored, he began working with teachers, students and other administrators to adopt the method used today.

Bever, who was named the Indiana Middle School principal of the year in 2004 by the Metlife/National Association of Secondary School Principals, reviles one-size-fits-all zero-tolerance policies. While they may make it easier for schools to protect themselves in court, they also relieve administrators from the duty to exercise discretion and leadership in dealing with school challenges, he says.

At Baltimore's Garrison Middle School, where nearly 85 percent of the students come from poor, single-parent families, Meet Me Halfway provides academic mentoring, conflict resolution and behavioral help. The nonprofit program, housed in

the school's basement, was formed in 2004 by Bernard Fayall, a neighborhood resident who first volunteered at the school as a hallway monitor.²

Rita Fayall, Bernard's wife and Meet Me Halfway's program coordinator and chief fund raiser, says her husband started volunteering at the school after he was laid off from his shipyard welding job. He quickly found that students opened up to him, and soon he was working with kids who were misbehaving, being bullied or struggling in class.

Mrs. Fayall, who attended Garrison as a youngster, says Meet Me Halfway has a \$350,000 annual budget, supported by the Open



Greenfield Middle School/Sandra Hall

Principal James A. Bever often talks with sixth-graders during their first year at Greenfield Middle School. "These newly formed relationships then grow throughout their remaining two years in the school," he says.

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1988, as a crack epidemic was devastating inner cities nationwide, Attorney General Edwin Meese III used the San Diego program as a model for a na-

tionwide "zero-tolerance" policy ordering U.S. Customs Service officials to impound vehicles or property of anyone entering the country with any amount of drugs and to charge them in federal court.⁴¹

Within months the Coast Guard had seized more than 1,000 boats, cars and motorcycles, sometimes after finding trace amounts of marijuana or other drugs in the vessels. A citizen backlash ensued,

Society Institute-Baltimore, Goldsmith Family Foundation and other grant makers. The program receives in-kind help, including rent, janitorial help and teaching and health aides, from the school system and other city agencies, she says.

Meet Me Halfway has a wide variety of components. Students may drop in before or after school or on their lunch hour for a listening ear, classroom mentoring or perhaps to take advantage of a fitness program. Sometimes students who have been suspended come in for the support they need to get back on track. Teachers may send students to the program during the day for counseling. Or Meet Me Halfway staff may offer tutoring in a regular classroom.

Programs include a community food bank, job-skills training in printing and even a hair salon and barber shop staffed by volunteers who offer students free styling or haircuts — which build self-esteem, Mrs. Fayall says. A licensed counselor is on staff, and skills training in carpentry and technology are coming soon, she says. Dances and other recreational activities also take place.

And the doors are always open to parents, Mrs. Fayall says.

During the summer, in fact, the Fayalls invite parents to come in to discuss their children's goals and ways to improve communication. Letters go out over the name of the Garrison Middle School principal, she says. Mr. and Mrs. Fayall, along with other volunteers, have conducted hundreds of such interviews, she says.

"We find out what the parents' goals are for the child, what the students' goals are, what the family needs," she says. The information is put into a data base, and appropriate resources are found to help the families. The aim, she says, is to form a "positive relationship" among students, parents and the school.

Meet Me Halfway also helps to support a separate Garrison program, the Rising Scholars Academy, which offers alternative learning for students having trouble in the regular classroom setting.

Mrs. Fayall credits her husband's conflict-resolution skills for much of Meet Me Halfway's progress, saying he has a gift for working one-on-one with feuding students and build-



Bernard Fayall, founder of the Meet Me Halfway Village Center at Baltimore's Garrison Middle School, helped students build a "racecar" from a bathtub. The after-school program offers counseling, tutoring, conflict resolution and other support.

Meet Me Halfway Village Center

ing trusting relationships with them. "He can turn that thing around in 30 minutes," she says of the typical squabble between students.

In a single month back in 2005, he worked on resolving 61 conflicts between students, she says, adding: "In September 2007 he did nine, so the kids are learning to do it themselves. Now they come down here [to Meet Me Halfway] before they fight."

Relationship-building is also important at ethnically diverse West Potomac High, where roughly a third of the nearly 2,000 students come from low-income families. The "primary approach" at West Potomac "is trying very hard to make sure this is a safe and secure [place] and that everybody feels part of a family," says principal Vesilind.

"We definitely have zero tolerance for some things," she says. "Weapons or weapon-like things, drugs — there's no wiggle room on those."

But Vesilind stresses that West Potomac is a "place for learning." To make that so, she says, she and her staff try hard to build relationships with students, offer one-on-one help, provide regular feedback and pay attention when students are struggling.

"There's no kid who wants not to be successful, but sometimes they can't figure out how to do it," she says.

The key, Vesilind says, is communication. "If you have kids who are being pulled gradually into a gang, you talk to those kids all the time and make sure they know you don't want them to do that. I've had kids who were walking the line [of joining a gang] who say, 'I decided to make myself be a better student because I didn't want to disappoint you.'"

The approach has paid off, Vesilind says. "This is my fourth year" as principal. "The year before I came, there were 170 fights." Now, she says, that number is "way down. It's more like 10."

¹ M. Karega Rausch and Russell Skiba, "Doing Discipline Differently: The Greenfield Middle School Story," Center for Evaluation and Education Policy, July 9, 2004, www.indiana.edu/~ceep.

² "Description of Project Garrison's Meet Me 1/2 Way Initiative at Garrison Middle School," Open Society Institute-Baltimore.

triggering angry testimony before Congress, and by May of that year Customs officials had agreed to confiscate vessels only when there was clear evidence they were being used for drug trafficking.⁴²

But by that time zero tolerance had already caught on in schools. In 1986, Education Secretary William J. Bennett had urged Congress to withhold federal education money

from schools that didn't adopt zero-tolerance expulsion policies for students using or selling drugs at school. Bennett didn't succeed, but by late 1989 school districts in California,

DISCIPLINE IN SCHOOLS

New York and Kentucky had created zero-tolerance policies for drugs and gang activity.⁴³

In 1994 zero tolerance received a massive boost with enactment of the Gun-Free Schools Act, which required school districts receiving federal money to expel for at least a year any student caught carrying a gun on school grounds. The law was enacted amid a get-tough-on-crime trend that swept the country in the 1990s, resulting in minimum-sentence laws, three-strikes-and-you're-out penal codes for habitual offenders and burgeoning prison populations.⁴⁴

Soon, states were broadening the no-gun mandate, requiring school districts to bar anyone carrying anything that could be used as a weapon. Critics began complaining that such rules were being applied indiscriminately to innocuous items such as nail clippers and to all manner of misconduct — even minor infractions like smoking, violating dress codes and skipping class.

While the Gun Free Schools Act gave administrators authority to modify their expulsion decisions on a case-by-case basis, critics say many began applying zero-tolerance codes in narrow ways, treating every case — minor or major — the same. “They felt there was a need to be draconian,” arguing that “‘we’re trying to keep our schools safe — we’re under siege,’ ” says Ronnie Casella, an education professor at Central Connecticut State University who has written extensively on school discipline.

“Also,” he says, “there was a feeling that when you do look at [discipline violations] on a case-by-case



Taylor Hess, an honor student and varsity swimmer at L.D. Bell High School in Fort Worth, Texas, was suspended for a year after a school guard saw a non-serrated bread knife lying in his pickup truck, which he had just used to haul household goods to Goodwill. School systems around the country are scrutinizing so-called zero-tolerance policies, which rely heavily on suspension or expulsion to deal with misconduct regardless of the infraction.

AP Photo/Dawn Dietrich

basis, you’re open to charges of racism,” with students, parents and civil-rights groups asking why the rules were applied inconsistently. “So this whole idea that everybody gets the same kind of punishment was almost a way of dealing with past biased discipline policies.”

Casella also cites a push in the 1990s to fill a growing number of alternative schools, boot camps and other facilities built to accommodate young ruffians. “Once you develop those institutions, it becomes a self-fulfilling prophecy. There was a push to fill these outplacements, and now they’re a part of the school system.”

In the 2000s, according to some critics of zero tolerance, administrators have used stiff disciplinary penalties to winnow out low-achievers because schools are under intense pressure to get their students to pass standards-based achievement tests mandated by the Bush administration’s No Child Left Behind law. Facing sanctions for poor student performance, administrators have less and less patience with students who create disruptions that jeopardize class-

room learning, or drag down test scores.

Meanwhile, other federal laws have played a role in shaping disciplinary procedures. Among the most controversial: the Individuals with Disabilities Education Act (IDEA), first passed in 1975, which guaranteed a public-school education to all disabled youngsters. Disciplinary provisions in the act have been highly contentious. Among the law’s provisions is one that makes it difficult to impose long-term suspensions or expulsions if their misconduct stems from their disability, although if they

commit a crime or are a danger to themselves or others they can be removed immediately.

“Schools have often argued that the discipline provisions for children with disabilities should be the same as those for children without disabilities and that the provisions of IDEA created too much of a paperwork burden,” the Congressional Research Service noted.⁴⁵

Children’s advocates, on the other hand, say the law aimed in part to prevent schools “from unilaterally denying services to children with disabilities when they misbehaved, that due-process procedures are necessary to prevent this denial of education and that children with disabilities should not be punished for behavior that was caused by their disability.”⁴⁶

Violence and Bullying

In the late 1990s, a spate of school shootings helped strengthen administrators’ resolve to keep schools safe. In October 1997 a student in Pearl, Miss., murdered his mother, then opened fire

on classmates, killing two students and wounding seven. Two months later came the Paducah shootings. In 1998 two middle-school students in Jonesboro, Ark., killed four students and a teacher and wounded nine others.

After several more school shootings came the devastating Columbine massacre of 1999, in which 12 students and a teacher were shot and killed, and 23 were wounded, by two heavily armed students who then killed themselves. Columbine was a watershed event that stunned the country and triggered nationwide soul-searching about its cause.

It also helped strengthen support for no-tolerance discipline policies. "There was pressure on school districts to look like they were doing something about this rampage of violence that was taking over in the 1990s," Casella says, "and a lot of the pressure was coming from parents."

But the shootings also opened discussion on the psychology of troubled students, leading some critics to argue that school administrators and policy-makers were focusing too much on truancy and drugs and not enough on the problem of bullying as a catalyst for violent student behavior. Several post-Columbine studies into the causes of the shootings found that most teenage school shooters had felt bullied or persecuted.

By 2005, 17 states had passed anti-bullying statutes, according to the Education Commission of the States.⁴⁷

Recently, a National Association of Attorneys General task force pointed to the significance of bullying in episodes of school violence and noted the growth of "cyber bullying" in schools. "The growth in the use of technology and social-networking sites by younger Americans has fueled a fear among professionals that cyber bullying will become the means most often utilized to harass, threaten or otherwise cause distress," said the task force.⁴⁸

A Pew Research Center study last year found that one in three teenagers who use the Internet said they had

been targets of annoying and potentially menacing online activities, including receiving threatening messages and having rumors about them spread online.⁴⁹

Bond, the safe-schools specialist at the National Association of Secondary School Principals, says that rather than relying on indiscriminate zero-tolerance policies to stop bullying, administrators must do a better job of staying on top of what is happening in their schools. That requires training teachers in classroom management, collecting and analyzing data on student conduct and listening carefully to student concerns, he says.

"Kids at my school . . . were being humiliated and ridiculed by words," Bond says of his days as a principal in Paducah, "and words cut people all the way to the heart and do more damage than being hit upside the head. If we just focus on [physical violence] and ignore the emotional damage, it just doesn't work."

Zero-tolerance policies are appropriate for serious offenses such as weapons, Bond says, but with issues like bullying, using the threat of suspension or expulsion can backfire. "You can't have zero tolerance for bullying because the definition in itself doesn't apply — what's going to be bullying and what's not? If a kid says something to another kid out of emotion, you use that and suspend a kid? That's not improving education.

"When you're dealing with 50 million kids and you try to make rules that apply to all 50 million circumstances with words like 'zero tolerance,' you're going to have a problem," he concludes.

Teacher Education

With teachers on the front lines of forming relationships with students and maintaining order, their ability to manage the classroom is crucial. And studies suggest that ability is sorely lacking, in part because of poor teacher training.

A four-year study conducted by Arthur Levine, former president of

Teachers College at Columbia University, concluded that many students graduate from teacher-education programs lacking the skills and knowledge needed to be effective teachers.

"Only about one-third of principals said that their teachers are very or moderately well-prepared to maintain order in the classroom or to address the needs of students with disabilities," the study concluded.⁵⁰

On the other hand, teachers who are well-trained in dealing with student misconduct can face an uphill battle when tough discipline is warranted. Buzad of the American Federation of Teachers says teachers often are afraid of reprisals from aggressive students or litigious parents. And, she adds, they may not be adequately backed up by the school administration.

"Some places are doing this well [and have] high standards," she says, but "teachers are facing more and more accountability and less and less power around decision making." In many cases, "there's no power to have a kid removed from class where it would be beneficial for the kid as well as the kids in the class." ■

CURRENT SITUATION

'Scarlet Letter'

As schools continue to struggle to maintain order and safety, all eyes are watching whether Congress will overhaul the controversial No Child Left Behind law. Reauthorization of the measure, a signature of the Bush administration, has stalled on Capitol Hill amid bitter debates over how to change the law or even whether to keep it at all.

Among the law's most controversial provisions is a requirement that

Lawmakers Balk at Closing Gun-Show Loophole

Plea by Virginia Tech families is ignored.

After Eric Harris and Dylan Klebold carried assault weapons into Colorado's Columbine High School in 1999 and killed 12 students and a teacher, states and school districts moved quickly to strengthen school security and disciplinary codes on firearms and bullying.

Such events "really have impacted the way we think about student safety," says Julie Underwood, dean of the School of Education at the University of Wisconsin, Madison.

But getting lawmakers to act on gun-control measures in the aftermath of school violence has been an uphill battle. In Virginia, for instance, legislators balked even after last spring's massacre at Virginia Tech, where mentally ill student Seung-Hui Cho shot 32 students and teachers before taking his own life. With support from victims' families, Democratic Gov. Tim Kaine had asked the state's General Assembly to require criminal background checks on anyone buying a gun from an unlicensed dealer at a gun show. Although Cho had bought guns from licensed dealers and passed background checks, a state panel noted he could have avoided such checks by exploiting the so-called gun-show loophole.

However, even the emotional appeals of the Virginia Tech families failed to persuade the Virginia Tech Assembly. The Republican majority in the House of Delegates' Militia, Police and Public Safety Committee voted along party lines in January 2008 to kill a measure designed to close the loophole. A similar bill failed in the state Senate, which is controlled by Democrats.

Less than a week later, Democratic Sens. Frank R. Lautenberg of New Jersey and Jack Reed of Rhode Island introduced federal legislation to close the gun-show loophole nationwide, flanked by Virginia Tech families.

"We saw what happened at Virginia Tech and Columbine High School when dangerous people have easy access to guns," said Lori Haas, whose daughter Emily was wounded by Cho. "Congress should do all that it can to prevent other American families from suffering the ordeal of gun violence like the Virginia Tech families have had to suffer."¹

Such family involvement in the legislative process is important, says Paul Helmke, president of the Brady Campaign to Prevent Gun Violence. "It puts a human face on the issue, and it's something that [elected officials] have to listen to." But in fact, officials don't always listen. Not only did Virginia lawmakers turn aside family appeals, but much the same thing

happened after the Colorado rampage.

In the wake of that school-shooting spree, families — along with business and civic leaders — pressed state lawmakers to close the Colorado gun-show loophole that Harris and Klebold had exploited to obtain weapons. But the effort faltered. The loophole was finally closed after voters approved a subsequent ballot initiative.

Whether Lautenberg and Reed's bill will make headway is an open question. It could find favor in the Democrat-controlled Congress. On the other hand, conservatives and pro-gun forces are likely to oppose it as an infringement on Second Amendment rights.

"It's simply a drive to make it impossible to have guns without being regulated by the government," said Larry Pratt, executive director of Gun Owners of America. "From what the government itself has found, shows are seldom where guns get into the hands of criminals. Gun shows are a freedom, and they're trying to take away another freedom."²

Lautenberg introduced the first bill to close the gun-show loophole in 1999. In the aftermath of the Columbine shootings, the Senate passed the measure, with Vice President Al Gore casting the tie-breaking vote. The legislation, opposed by the gun lobby, died in a House-Senate conference. The gun lobby then vigorously fought Gore's 2000 bid for the presidency, and some pundits say their opposition helped to doom Gore. Since then many Democrats have backed away from gun control.

Lautenberg and Reed's new legislation would require background checks for every gun purchased at a gun show. "It defies common sense that a loophole in federal law lets unlicensed dealers sell firearms at gun shows without running a background check on the buyer," Lautenberg said. "Without this change in the law, felons, fugitives and severely mentally ill people will continue to be able to buy guns — no questions asked."³

¹ Quoted in "Brady Campaign Urges Support For Bill To Close Gun Show Loophole," press release, Brady Campaign, Jan. 30, 2008, www.bradycampaign.org/media/release.php?release=961.

² Quoted in Ben DuBose, "Senators try to widen scope of firearm background checks; Two Democrats seek to close a loophole regarding sales at gun shows. A similar effort in Virginia failed," *Los Angeles Times*, Feb. 1, 2008, p. A11.

³ Press release, office of Sen. Frank R. Lautenberg, "Sens. Lautenberg, Reed Join Law Enforcement Officials and VA Tech Victims in Call to Close Gun Show Loophole," Jan. 30, 2008.

states identify "persistently dangerous schools" using criteria set by each state. Schools designated as dangerous must give students the option of transferring to a safe school within their district.

The provision has drawn a barrage of criticism from administrators, education theorists, policymakers and pundits. Critics argue that state benchmarks for identifying dangerous schools are grossly inconsistent and that in

many states the number of dangerous incidents is vastly underreported.

According to preliminary Department of Education data for the 2007-2008 school year, only 48 out of roughly 94,000 schools

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At Issue:

Should school districts be able to search student lockers without probable cause?



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WRITTEN FOR *CQ RESEARCHER*, FEBRUARY 2008

Schools exist for a single purpose: to educate the youth within their walls. If this statement is false, then the buildings should be sold to Wal-Mart so at least they could be put to more productive use.

In his 1943 paper *A Theory of Human Motivation*, psychologist Abraham Maslow proposed his ground-breaking Hierarchy of Needs pyramid. Maslow argued that certain needs must be met to reach the “self-actualization” level, which allows individuals to achieve problem solving, morality and creativity. The first rung on the pyramid is “physiological needs” — breathing, food, water and sleep. The next rung is “safety” — body security, possessions and health.

Our young people must be assured that the schools they walk into are providing the best level of safety that is humanly possible. If students fear they may be subject to physical attacks, put in substandard buildings incapable of withstanding Mother Nature’s hazards or forced to deal with a staff that cannot cope with daily threats to students’ safety, then self-actualization — i.e. learning — will never occur.

Fortunately for the millions of youth attending our nation’s schools, local, state and federal courts have given school officials the authority and responsibility to provide a safe learning environment. The hallmark of this authority lies in the ability of schools to search lockers if school officials or safety personnel have a “reasonable suspicion” the locker contains drugs, weapons or other contraband.

Let’s make one point very clear: The locker is owned by the school district. It is loaned to the student for use under the condition that all board of education policies and codes of conduct be followed. There is no expectation of privacy beyond the requirement that school personnel have a reasonable suspicion before making a search.

Drugs, weapons and contraband of any type can be stored in a student locker. The fact that students know lockers can and will be searched for items that can do harm is a major deterrent to bringing these items to school and presents a tremendous feeling of safety to the vast majority of students, who expect and demand that school officials assure a safe and secure environment for learning.



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AMERICAN CIVIL LIBERTIES UNION*

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Unrestricted searches of student lockers are part of the larger school-to-prison pipeline problem — the alarming trend of punishing, criminalizing and incarcerating youth, instead of educating them. In the name of school security, school officials conduct locker searches, bag searches, even strip searches — all without probable cause. They handcuff children as young as 5 for throwing temper tantrums. They have students arrested for “disorderly conduct” or “disturbance of school” when they misbehave. They have armed police officers patrolling school hallways with little to no training on how to interact with youth.

These policies have been initiated even though school violence has actually dropped in recent years, and even though there is no evidence suggesting that these practices are effective in creating safer schools.

In a South Dakota public school, officials found reasonable suspicion to search a Native American student’s locker and referred him to law enforcement upon finding a print-out of rap lyrics, a sign of gang activity, according to the school administration.

In one California public school, Hispanic students — and only Hispanic students — were photographed in connection with the school’s efforts to crack down on gang activity, even though there was no allegation that any of the children photographed were affiliated with a gang.

School officials in a South Carolina district invited armed police officers to conduct SWAT-like searches, complete with canines and pointed guns, of 150 mostly black students in a majority-white school on the suspicion that one student — who was absent that day — was dealing marijuana.

The lack of adequate safeguards to place a check on such “security” measures invites these types of abuse as well as racial profiling. As a result, students across the country report that their schools increasingly resemble prisons.

Of course school officials, just like law enforcement, should be permitted to search lockers when there is probable cause to suspect a crime. But at the same time, school officials must be held accountable against exercising their discretion to alienate and criminalize the very children who need their protection the most.

Dangerous Incidents Seem Underreported

Only 46 of the nation's 94,000 public schools were classified as "persistently dangerous" during the 2006-2007 school year, according to data provided by the individual schools. Under the No Child Left Behind law, schools designated as persistently dangerous must allow students to transfer to a safe school within their district. Critics say state-set benchmarks for identifying dangerous schools are grossly inconsistent and that schools underreport dangerous incidents to avoid negative publicity and the "persistently dangerous" label.

Schools Identified as "Persistently Dangerous" (2006-2007)

State/Territory	No. of Schools
Maryland	6
New Jersey	4
New York	17
Oregon	1
Pennsylvania	9
Puerto Rico	4
South Dakota	1
Texas	4
TOTAL	46

Source: U.S. Dept of Education

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are classified as "persistently dangerous." For the previous school year, the total was only 46, with none in such big states as Illinois, Florida or California. A Department of Education Inspector General report last year pointed out that a Los Angeles high school with 289 cases of battery, two assaults with a deadly weapon, a robbery and two sex offenses in one school year did not meet California's definition of a persistently dangerous school.⁵¹

One reason for the inconsistent reporting is that some states use a broader time horizon than others. A 2004 analysis by the Education Commission of the States found that more than half the states considered incidents that occurred during a three-year period, and more than a fourth used a two-year window.⁵²

"There's very little oversight" of the persistently dangerous provision of the law, says Buzad of the American Federation of Teachers. "If there's a fight in the main hall of the high school, whether those kids receive suspension or detention or the state requires the principal to report that as a violent incident, it varies from state to state and district to district."

Kenneth S. Trump, president and CEO of National School Safety and Security Services, a consulting company in Ohio, told the House Committee on Education and Labor last April that the "persistently dangerous school" label "is considered to be the 'Scarlet Letter' of education today." As a result, "states have created definitions of 'persistently dangerous' that are so unreachable that they could not be met by most school districts even if they wanted the label."⁵³

The concern about the label's inconsistency was reinforced last year by an advisory panel appointed by Education Secretary Margaret Spellings to evaluate the controversial provision and other school-safety issues. Reporting standards "vary from state to state, and some schools may not even be reporting," stated the panel, which included school administrators, education researchers and federal officials. "As a result, schools that are accurately reporting incidents are being penalized for doing it."⁵⁴

Some principals may keep dangerous incidents under wraps, critics say, possibly to keep from drawing negative attention to their schools or because they simply can't accurately categorize an episode. "What's an assault and what's not an assault?" asks Bond of the National Association of Secondary School Principals. "That's really a decision to be made by district attorneys and police officers, and [their] interpretation of that varies greatly. If you have a first-grader hit another kid on the shoulder, is that an assault or not?"

Critics also say that the "persistently dangerous" provision does nothing to make schools safer. "If you call a school persistently dangerous, it has no hope of becoming less dangerous or even surviving with language like that," says Bond, who participated in the advisory committee. Congress, he says, should "look at what really helps a school be safe and orderly and not what makes a school dangerous."

Spellings' advisory panel recommended, among other things, that the persistently dangerous terminology be changed and that the focus shift toward "providing help for potentially unsafe schools." It also suggested using school-climate surveys to determine whether schools are becoming safer.⁵⁵

In a controversial "discussion draft" last fall, the House Education Committee proposed shifting the existing "persistently dangerous" section of the law to a new "challenge schools" grant that would define such schools as those

found “not to have a safe climate for academic achievement.”⁵⁶

Whether and how Congress might overhaul the No Child Left Behind law remains an open question. But one thing is clear: Both supporters and detractors of the law believe much more needs to be done to make schools safe.

SAVE Act

U.S. Rep. Carolyn McCarthy, D-N.Y., is among those working to improve school safety. She ran for Congress after her husband was shot and killed along with five others on the Long Island Railroad in 1993. Last year she introduced the Safe Schools Against Violence in Education (SAVE) Act, which, among other things, calls for more accurate reporting of school-violence incidents. The bill would replace the “persistently dangerous” term with “safe climate for academic achievement.”

McCarthy’s measure has won support from school-safety experts like Trump. “One of the ‘dirty, little secrets’ in our nation’s education community is that there is no comprehensive, mandatory, federal school-crime reporting and tracking of actual school-crime incidents for K-12 schools,” Trump said in his testimony before the House Education and Labor panel. “Federal school-crime and violence data by and large consists of a hodgepodge collection of just over a half-dozen academic surveys and research studies.”

Trump pointed out that the Gun Free Schools Act only requires schools to report the number of students expelled for gun offenses that occur on campus. It does not require schools to report non-students arrested on campus with firearms or expelled students who return to campus with a firearm.

The SAVE Act would not only close such loopholes, he said, but also require states to use FBI “incident-based” data, a move that “would provide the first meaningful effort to shift the conversa-

tion on school safety in this country from one based on perception and opinion surveys to actual incident-based data on real crimes . . . at our nation’s schools.”

Other proposals addressing the school-discipline problem include an anti-bullying measure introduced by Rep. Linda Sanchez, D-Calif., which would require schools to include anti-bullying policies in their conduct codes.⁵⁷ A broad coalition of education, civil-rights, law-enforcement and youth-advocate groups is pushing for anti-bullying legislation, including Sanchez’, under an umbrella organization called the National Safe Schools Partnership.

State Proposals

States are focusing on student discipline along with the federal government. In 2007 alone, at least 11 states passed laws related to school safety and discipline, according to the Education Commission of the States.⁵⁸ In some cases, states stiffened penalties for misconduct, while in others they have eased up on the rules, reflecting concern that certain disciplinary approaches may be counterproductive.

States passing legislation on school discipline last year included:

- North Carolina, which mandated that parents receive notice of a student’s expulsion or suspension.⁵⁹
- Louisiana, which lengthened expulsion periods for students caught with a firearm on school property, school buses or at school-sponsored events.⁶⁰
- Kansas, which required school boards to adopt anti-bullying policies that include staff and student training.⁶¹
- Rhode Island, which required that disciplinary actions for students who possess or use alcohol, drugs or weapons be decided on a case-by-case basis.⁶²

“There were a number of children who were unfairly being disciplined,” says state Rep. Anastasia P. Williams, the Prov-

idence Democrat who co-sponsored the legislation in Rhode Island. “There was case after case, and it was like, enough already.” In 2004 a Rhode Island sixth-grader was arrested and suspended for six days for bringing a kitchen knife to school to peel an orange, and in 1995 a kindergartner had been suspended for 10 days for bringing a butter knife to cut cookies.⁶³

“There are other ways we can approach the situation,” says Williams. ■

OUTLOOK

Zero Tolerance?

With the never-ending array of situations presented by student misconduct — from guns and assaults to dress-code violations — state lawmakers and local school districts will continue to face the question of whether to tighten up on certain laws and loosen others.

Daniel P. Mears, an associate professor at Florida State University’s College of Criminology and Criminal Justice, points out that when it comes to the juvenile-justice system and student misconduct, there are “classic gray areas” that make many situations difficult to weigh. “It’s great when you’re dealing with extremes,” he says, “but it’s the gray areas that are hard.”

In the coming months, differing views will emerge on the local, state and federal levels. Although President Bush urged renewal of the No Child Left Behind measure in his State of the Union address, many remain skeptical of its chances.⁶⁴ While some Capitol Hill observers believe a revised measure could be acted upon this spring, others think nothing is likely to happen at least until a new president takes office in 2009.

On the local and state levels, zero-tolerance policies remain the approach of choice among many school

authorities, but concerns about soaring suspension and expulsion rates — especially for relatively minor offenses — are likely to put pressure on school districts to find new methods for retaining order and safety.

"My sense is that we really are much more evenly divided" on zero-tolerance policies, says Skiba of Indiana University. "When I started looking at zero tolerance in 1997, I was kind of a voice crying in the wilderness. By 2000 some were expressing doubts. Now, my sense is that school systems around the country are pretty evenly divided on the use of zero tolerance versus other approaches."

Of course, another shooting spree at a school can propel that momentum in the opposite direction.

"As a society, we careen wildly from extreme to extreme," notes Jamin B. Raskin, an American University law professor who writes on juvenile-justice issues. When student misconduct involves weapons, he says, "the solution is to take away all student rights." On the other hand, if a school goes too far with its get-tough policies, "people remember the Bill of Rights and due-process protection."

Adds Raskin: "People have a hard time maintaining contrary principles in their minds."

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FOR MORE INFORMATION

American Federation of Teachers, 555 New Jersey Ave., N.W., Washington, DC 20001; (202) 879-4400; www.aft.org. Nationwide union representing classroom teachers and other personnel.

Applied Research Center, 32 Broadway, Suite 1801, New York, NY 10004; (212) 513-7925; www.arc.org. Promotes racial justice through research, advocacy and journalism on education, poverty and other issues.

Center for Evaluation and Education Policy, 509 East Third St., Bloomington, IN 47401-3654; (800) 511-6575; <http://ceep.indiana.edu>. Conducts research on education policy, including student-discipline practices.

Education Commission of the States, 700 Broadway, #1200 Denver, CO 80203-3460; (303) 299-3600; www.ecs.org. Maintains extensive online resources on education policy.

National Association of Secondary School Principals, 1904 Association Dr., Reston, VA 20191-1537; (800) 253-7746; www.nassp.org. Promotes the interests of middle- and high-school administrators.

National Center for Education Statistics, 1990 K St., N.W., Washington, DC 20006; (202) 502-7300; <http://nces.ed.gov>. Collects and analyzes data on education.

National Education Association, 1201 16th St., N.W., Washington, DC 20036-3290; (202) 833-4000; www.nea.org. Nationwide union representing classroom teachers and other personnel.

National School Boards Association, 1680 Duke St., Alexandria, VA 22314; (703) 838-6722; www.nsba.org. Federation of state school-board associations.

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CITING CQ RESEARCHER

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